Global Financial Services Regulatory Guide - Philippines

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

The Bangko Sentral ng Pilipinas (BSP) (or the Philippine Central Bank) is the central monetary authority in charge of regulating money, banking and credit in the Philippines. The BSP is an independent government-owned corporation with the primary responsibility of supervising and regulating finance companies, bank operations, non-bank financial institutions performing quasi-banking functions, and other institutions performing similar functions. The primary objective of the BSP is to promote and preserve monetary stability and the convertibility of the national currency (Philippine peso).

The BSP is governed by the Monetary Board, composed of seven members appointed by the president of the Philippines, with the governor as its chair. Through the Monetary Board, the BSP  issues rules and regulations in the exercise of its regulatory powers and directs the management, operations and administration of the BSP.

Under the New Central Bank Act, the BSP performs the following functions, all of which relate to its status as the Philippines’ central monetary authority:

**Liquidity management**—The BSP formulates and implements monetary policy to influence the money supply, consistent with its primary objective of maintaining price stability.

**Currency issue** – The BSP has the exclusive power to issue the national currency. All notes and coins issued by the BSP are fully guaranteed by the government and are considered legal tender for all private and public debts.

**Lender of last resort** – The BSP extends discounts, loans and advances to banking institutions for liquidity purposes.

**Financial supervision** – The BSP supervises banks and exercises regulatory powers over non-bank institutions performing quasi-banking functions.

**Management of foreign currency reserves** – The BSP seeks to maintain sufficient international reserves to meet any foreseeable net demands for foreign currencies in order to preserve the international stability and convertibility of the Philippine peso.

**Determination of exchange rate policy** – The BSP determines the exchange rate policy of the Philippines. Currently, the BSP adheres to a market-oriented foreign exchange rate policy, principally to ensure orderly conditions in the market.

**Other activities** – The BSP functions as the banker, financial advisor and official depository of the government, its political subdivisions and instrumentalities, and of government-owned and -controlled corporations.

The Philippine Deposit Insurance Corporation (PDIC) has the power to conduct examinations of banks with the prior approval of the Monetary Board and within terms and conditions determined by law. All banks are obligated to ensure deposit liabilities with the PDIC up to a maximum amount of PHP 500,000 or its foreign equivalent.

The Anti-Money Laundering Council has the power to conduct investigations of money laundering and other violations of Republic Act No. 9160 or the Anti-Money Laundering Act for the protection of the integrity and confidentiality of bank accounts and to prevent the Philippines from being used as a money laundering site for the proceeds of any unlawful activity. It monitors and receives covered or suspicious transaction reports from covered institutions under the law; investigates suspicious transactions and covered transactions deemed suspicious after an investigation; applies before the Court of Appeals, ex parte, for the freezing of any monetary instrument/property alleged to be proceeds of any unlawful activity; and implements such measures as may be necessary and justified to counteract money laundering.

The Insurance Commission (IC) has the authority to regulate and supervise insurance companies, intermediaries, pre-need companies and health maintenance organizations.

The Securities and Exchange Commission (SEC) also regulates certain types of financial services, such as financing and lending companies, as well as investment companies.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The Philippine main framework of regulatory laws is Republic Act No. 8791 (“**General Banking Law of 2000**” or GBL). The GBL sets the general standards and guidelines in banking and finance in the Philippines. It governs and defines the classification of banks (universal, commercial, thrift); the authority of the BSP; and the organization, management and administration of banks, quasi-banks and trust entities in the Philippines. The GBL also regulates deposits, loans and other banking operations, including foreign operations, conservatorship, cessation of banking business, and trust operations. Secondary and delegated legislation supplement and enhance the GBL’s basic framework.

Meanwhile, the Thrift Banks Act, the Rural Banks Act, the Philippine Cooperative Code, and the Charter of Al-Amanah Islamic Investment Bank of the Philippines govern the general conduct of thrift banks, rural banks and cooperative banks on matters not covered by the GBL.

On a micro level, the BSP Manual of Regulations for Banks (MORB) implements the GBL law, which outlines the more specific rules and regulations that all financial institutions doing business in the Philippines should comply with. The MORB serves as a complete manual for local and foreign exchange transactions. The BSP periodically issues various regulations, circulars and guidelines to update and enhance the MORB and to be abreast with market and economic developments.

Both the GBL and MORB provide guidance to general regulatory laws in the Philippines. Other banking laws are embodied in numerous presidential decrees and republic acts promulgated by the president.

The Amended Insurance Code is the main legislation on insurance, insurance companies and intermediaries.

The Financing Company Act regulates financing companies, while the Lending Company Regulation Act provides the legal framework for lending companies. The Investment Company Act governs investment companies, investment company advisers and fund managers.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

No person or entity shall engage in banking operations or quasi-banking functions in the Philippines without authority from the BSP. A financial institution that has been given authority to engage in universal or commercial bank activities is also authorized to engage in quasi-banking activities.

The following banking or quasi-banking activities are regulated in the Philippines:

**Maintaining adequate risk-based capital** – The Monetary Board prescribes the minimum ratio that the net worth of a bank must bear to its total risk assets, which may include contingent accounts. The minimum capital requirements of banks are found in the MORB.

**Accepting demand deposits** – A bank other than a universal or commercial bank cannot accept or create demand deposits except upon prior approval of, and subject to such conditions and rules as may be prescribed by the Monetary Board.

**Granting loans or credit accommodations** – Regulation covers credit exposure, use of loan proceeds, interest and other charges, and disclosure requirements in the grant of secured or unsecured loans. Among other guidelines, the BSP imposes the Single Borrower’s Limit and regulates credit accommodations granted by banks to its directors, officers, stockholders and their related interests.

**Issuing foreign letters of credit and pay/accept/negotiate import and export drafts/bills of exchange** – For non-universal or non-commercial banks, prior approval of the BSP is required before engaging in these activities.

**Establishing a subsidiary, regional or operating headquarters, or local branch in the Philippines by a foreign bank** – No bank operating in the Philippines shall establish branches, extension offices or other banking offices, or transact business outside the premises of its duly authorized principal office or head office without the prior approval of the Monetary Board.

**Selling or relocating banks, closing banks and conservatorships** – The BSP regulates and/or approves any change in ownership, location or status of a bank or any other financial institution.

**Disclosing confidential information or credit data** – Philippine law promotes secrecy of bank deposits (both local and foreign), but subject to exceptions such as those contained in the Anti-Money Laundering Act.

**Insuring deposits** – All banks and financial institutions are required to coordinate with the Philippine Deposit Insurance Corporation in insuring its deposits.

**Borrowing from the BSP or other agencies of the government** – There is an application procedure that must be followed when a BSP-registered bank or non-bank financial institution borrows (including emergency loans and advances) from the BSP or the government.

**Foreign exchange transactions** – There are regulations for foreign exchange transactions, including, among others, current accounts, deposits, forwards and swaps, foreign merchandise trade transactions (import and export), loans and guarantees, foreign investments, offshore banking, foreign currency deposit units and expanded foreign currency deposit units, and transactions with representative offices of foreign banks.

**Reporting requirements** – Banks and financial institutions are required to regularly report certain transactions to the BSP. Minimum auditing standards must be complied with.

The BSP also regulates virtual asset service providers. Under BSP regulations, "virtual asset" refers to any type of digital unit that can be digitally traded or transferred and can be used for payment or investment purposes. BSP regulations cover virtual asset service providers or entities that offer services or engages in activities that provide facility for the transfer or exchange of virtual assets. A virtual asset provider must secure a Certificate of Authority to operate and register with the BSP.

Insurance companies and intermediaries are also required to obtain the appropriate license from the IC.

An entity engaged in the business of extending credit facilities to consumers and to industrial, commercial or agricultural enterprises by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages or other evidence of indebtedness, or by financial leasing, is required to obtain a license as a financing company from the SEC. Further, an entity engaged in granting loans from its own capital funds or from funds sourced from not more than 19 persons must be licensed as a lending company. Investment companies, investment company advisers, and fund managers must also obtain the required investment license from the SEC.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Foreign exchange transactions by financial institutions domiciled in the Philippines (including subsidiaries, affiliates, branches and offshore banking units of foreign corporations) are regulated by the BSP. Some transactions require prior BSP approval, while other transactions need no approval but are subject to reporting requirements. The following are regulated and/or closely monitored by the BSP: (i) sales of foreign exchange; (ii) cross-border transfers of local and foreign currencies; (iii) buying and selling of gold; (iv) import trade transactions with banking transactions; (v) foreign and foreign currency loans; (vi) foreign investments; (vii) activities of offshore banking units (such as a foreign banking corporation that is duly authorized by the BSP to engage in banking transactions in foreign currencies involving the receipt of funds principally from external sources), representative offices and foreign currency deposit units (unit of a local bank or of a local branch of a foreign bank authorized by the BSP to engage in foreign-currency-denominated transactions) of foreign banks; and (viii) forwards, swaps and open foreign exchange positions of banks. The MORB and the Manual of Regulations on Foreign Exchange Transactions contain a complete general framework regarding the licensing requirements for these transactions.

Pursuant to its commitment and support of the global fight against money laundering, the BSP closely monitors cross-border transfers of local and foreign currencies. All commercial, universal and thrift banks are required to submit a quarterly report on their cross-border financial positions. These reports will need to include claims from and financial liabilities to non-residents and multilateral agencies, according to the sector of their non-resident counterparty (the other party that participates in a financial transaction) within a country.1 Late and/or erroneous reporting is subject to penalties prescribed in the MORB.

Further, the Revised Corporation Code of the Philippines also requires all foreign corporations “doing business” in the Philippines to register and obtain the appropriate license from the SEC. To comply with the SEC licensing requirement and depending on the intended activities of the corporation, the foreign corporation may establish, among others, a branch office or a representative office. The foreign corporation may also set up a subsidiary and conduct its activities in the Philippines through the subsidiary. To apply for an SEC license, the foreign corporation must indicate in its application the place in the Philippines where the foreign corporation intends to operate. Thus, the foreign corporation will need to identify the address of its office in the Philippines.

The Supreme Court has consistently ruled that the true test for “doing business” is whether the foreign corporation is '”continuing the body of the business or enterprise for which it was organized and whether there exists a continuity of commercial dealings and arrangements which include acts that are normally incident to, and in the progressive prosecution of, the purpose and object of its organization.”

In 2017, the SEC rendered an opinion that a foreign corporation that operates an “active website” to offer for sale and sell content and services to customers in the Philippines will be considered to be doing business in the Philippines and will be subject to the SEC licensing requirement.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

The Monetary Board of the BSP determines whether a person or entity shall perform banking or quasi-banking functions. The GBL requires banks and other financial institutions to be stock corporations with funds obtained from the public (equivalent to deposits/investments of at least 20 persons). There are minimum capital requirements that must be met. In granting authorization/license, the Monetary Board shall take into consideration an entity’s capability in terms of its financial resources, technical expertise and integrity.

Once authorized, the powers and scope of authority of banks shall be based on its classification (i.e., universal bank, commercial bank, thrift banks,1rural banks, cooperative banks, Islamic banks and quasi-banks2). In addition to the powers authorized for a commercial bank in Section 29 of the GBL, a universal bank generally has the authority to exercise the powers of an investment house, as provided in existing laws, and the power to invest in non-allied enterprises. Commercial banks possess general powers incident to corporations and all such powers as may be necessary to carry out the business of commercial banking.3

An investment company that is engaged solely in investing, reinvesting or trading in securities is not engaged in banking and needs not comply with the requirements of the General Banking Law.4

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1. Further classified into: (a) savings and mortgage banks; (b) stock savings and loan associations; and (c) private development banks.

2. Quasi-banks are entities engaged in the borrowing of funds through the issuance, endorsement or assignment, with recourse or acceptance of deposit substitutes, for purposes of relending or purchasing of receivables and other obligations.

3. These include accepting drafts and issuing letters of credit; discounting and negotiating promissory notes, drafts, bills of exchange and other evidence of debt; accepting or creating demand deposits; receiving other types of deposits and deposit substitutes; buying and selling foreign exchange and gold or silver bullion; acquiring marketable bonds and other debt securities; and extending credit, subject to such rules as the Monetary Board may promulgate. These rules may include the determination of bonds and other debt securities eligible for investment, and the maturities and aggregate amount of such investment.

4. *Banas vs. Asia Pacific Finance Corporation*, G.R. No. 128703, 18 October 2000.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

An entity desiring to do banking transactions in the Philippines must follow the BSPs application process.

First, the applicant must complete an Application for Authority to Establish a Bank (standard form provided by the BSP) in triplicate. The original copy and duplicate copy shall be submitted to the Central Applications and Licensing Group (CALG) of the BSP. The third copy shall be retained by the applicant.

Second, the applicant shall be required to submit papers/documents and information in support of the application, some of which must be in the format supplied by the BSP. Among these are the Agreement to Organize a Bank; biodata of each of the incorporators, proposed directors and officers, and subscribers; their Statement of Assets and Liabilities1; Statement of Income and Expense2; and other financial documents as may be required, as well as their clearances from the National Bureau of Investigation and Bureau of Internal Revenue. For corporate subscribers and foreign bank subscribers, the BSP requires, among others, relevant corporate papers and audited financial statements for the last two years prior to the application. Applicants must also submit a Detailed Plan of Operation and Economic Justification for establishing the bank.

Third, the applicant must comply with the minimum capital requirements (ranging from PHP 10 million3 to PHP 3 billion4). The application shall be processed on a first-come, first-served basis, provided that all the required documents are complete and properly accomplished.

Fourth, the incorporators/subscribers, proposed directors and officers of the bank shall be subject to qualifications, grounds for disqualification, and other requirements of existing laws, rules and regulations of the BSP.

Fifth, there is a procedure to be followed for the issuance of an Authority to Operate. Once the Monetary Board/governor of the BSP approves the application for Authority to Establish a bank, the applicant shall be required to submit additional supporting documents and thereafter effect the filing and registration of said documents with the Securities and Exchange Commission. The applicant will then be given a period to complete additional requirements, if there are any.

Following the above procedure, the applicant may begin operating the bank, and within five banking days after the start of operations: (a) inform the BSP of the first day of operation and the banking hours and days; and (b) submit a statement of condition as of the first day of operation.

The authority to establish a bank shall be automatically revoked if the bank is not organized and opened for business within one year after receipt by the organizers from the Monetary Board of the notice of approval of their application.

The establishment of non-bank financial institutions performing quasi-banking functions is governed by the Manual of Regulations for Non-Bank Financial Institutions and its implementing rules and regulations.

The BSP has also adopted a regulatory sandbox framework that applies to entities that intend to offer or use an emerging or new technology to deliver financial products/services pertaining to activities that could fall under the regulatory purview of the BSP. Note, however, that proposed innovations that are determined to be within the scope of existing regulations will be evaluated in accordance with the established registration/licensing regimes.

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1. The statement must be sworn to by the subscriber themselves and duly notarized or certified by a certified public accountant, with schedules detailing cash in banks, securities, real estate, accounts receivable and accounts payable of the subscriber as of a date not earlier than 90 days prior to the filing of application of each of the subscribers.

2. The statement must be sworn to by the subscriber themselves and duly notarized or certified by a certified public accountant.

3. This is the minimum capital requirement for cooperative banks.

4. This is the minimum capital requirement for universal banks. The Monetary Board has different requirements for specialized banks, such as those engaged in micro-finance.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Once authorized or licensed in the Philippines, the financial institution can transact across Europe and other countries, subject to regulations on cross-border transactions and foreign exchange transactions. The Manual of Regulations on Foreign Exchange Transactions, together with other BSP issuances, consolidates all foreign exchange transaction regulations.

# 8. Authors and contact information

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